



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number 201049043
Release Date: 12/10/10
Date: 9/14/10
UL: 501.03-00.

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

You have not established that you are operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Furthermore, you have failed to establish that your activities further a public charitable purpose rather than the promotion of private interests within the meaning of section 501(c)(3) of the Code.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the

two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: July 20, 2009

Person to Contact:

ID Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Presentation 1 =

Presentation 2 =

Services 1 =

Services 2 =

Dear ***

We have completed our consideration of your application for recognition of exemption from federal income tax and we have concluded that you are not exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The reasons for our conclusion are explained below.

Facts

You were incorporated for exempt purposes within the meaning of section 501(c)(3) of the Code. Your activities consist of counseling people on various topics. The topics include motivational speaking, self studies, group self help book studies, general success tips and mentoring. Some of the counseling you will provide will be over the Internet. You also indicated that you would be providing other faith based counseling.

You have provided information about your counseling. The information you provided states that you will counsel people and organizations on financial issues. The topics that you will provide counseling on consist of Presentation 1. You provided a pamphlet that indicates you will provide financial consulting services that are known as Services 1. You have a three person board of directors, of which, two board members, husband and wife, will provide most of the services offered by the organization.

You have stated that you will customize some of these topics to meet specific needs of individuals and groups. You will charge an initial fee but you will accept other donations. In addition to financial topics, you will offer seminars on Presentation 2, and

others upon request. You also plan on offering services to churches and ministries relating to Services 2.

Law

Section 501(c)(3) of the Code provides, in part, for exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

In Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970), the Court reasoned that the congressional intent behind the conditional language of section 501(c)(3) of the Code, coupled with the burden of proof placed upon the taxpayer in these circumstances, requires plaintiff to clearly demonstrate its right to exemption.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), The Court stated that to qualify for exemption under section 501(c)(3) of the Code, petitioner has the burden of showing that it was organized and operated exclusively for religious or charitable purposes and further reasoned that the administrative record as stipulated by the parties does not make the necessary showing. Quite to the contrary, petitioner declined to furnish some of the information requested of it. Moreover, the answers to other inquiries were vague and uninformative.

In Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978), a nonprofit corporation that assisted charitable organizations in their fund raising activities by providing financial planning advice on charitable giving and tax planning to wealthy

individuals was held not to qualify under section 501(c)(3) of the Code because its tax planning services were a substantial nonexempt activity enabling the corporation to provide commercially available services to wealthy individuals free of charge.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), The court noted that the Petitioner has, for the most part, provided only generalizations in response to repeated requests by respondent for more detail on prospective activities; such generalizations do not satisfy us that petitioner qualifies for the exemption.

In At Cost Services, Inc., v. CIR, T.C. Memo., 2000-328, the Court relying on BSW, held that only real difference between petitioner and a for-profit temporary service agency is that petitioner does not charge local businesses the standard markup that such agencies routinely collect for services. The Court further stated that in analogous circumstances that furnishing services to local businesses at cost does not establish that an activity is charitable.

In Rev. Rul. 72-369, an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code; providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit.

Analysis

Under section 1.501(c)(3)-1(a)(1) of the regulations, an organization that is organized and operated exclusively for charitable purposes may qualify for exemption under section 501(c)(3) of the Code. Section 1.501(c)(3)-1(c)(1) of the regulations also provide that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. See section 1.501(c)(3)-1(c)(1) of the regulations.

The Tax Court has stated that an application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations,

and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3)." See, Bubbling Well Church of Universal Love. See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970). Furthermore, the courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption where the organization fails to provide requested information. "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities.... Such generalizations do not satisfy us that [applicant] qualifies for the exemption." Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004). The information submitted, thus far, is insufficient for us to conclude that you are organized and operated exclusively for charitable, religious or educational purposes as specified in section 501(c)(3) of the Code. Specifically, we are unable to determine whether or not you are operated for purposes that come within the exempt purposes described in section 501(c)(3) of the Code for the following reasons listed below.

You have provided information that you will provide faith based counseling and some of the counseling is providing financial services and some may be religious counseling. You have not distinguished how your financial presentations are different from any other commercial financial consulting services. See Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978). While it is not clear how you will be compensated for your consulting services, Rev. Rul. 72-369 states that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Rev. Rul. 72-369 further explained that furnishing managerial and consulting services at cost and solely for exempt organizations is not sufficient to characterize an activity as charitable; providing services at cost lacks the donative element necessary to establish this activity as charitable. The Rev-Rul. 72-369 provides that an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. See B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978). See also At Cost Services, Inc., v. CIR, T.C. Memo., 2000-328.

You have not provided sufficient details that your activities further exempt purposes within the meaning of section 501(c)(3). You have not provided any details as to the amount of time you spend on financial consulting verse faith based counseling. Therefore we are unable to determine if any of your activities furthers charitable purposes within the meaning of section 501(c)(3).

In summary, based on the information that you have submitted, we are unable to determine that the operational requirements for exemption under section 501(c)(3) and the regulations there under have been met. We are also unable to conclude that your future activities will meet the requirements of section 1.501(c)(3)-1(d)(ii) of the Income Tax Regulations, which require that a public rather than a private interests be served, and you have not established that you are not organized or operated for the benefit of private persons controlled, directly, or indirectly, by such interests. Also we are unable

to conclude, based on the information that you have submitted or lack there of, that your future activities, will meet the requirements of section 1.501(c)(3)-1(c)(2) of the regulations, which state that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private individuals. Based on the information provided, it appears that you also will be operating for the benefit of the directors, of which, two of the three, are husband and wife. See Bubbling Well Church of Universal Love. See also Peoples Prize.

Therefore, you have not established that you are operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Furthermore, you have failed to establish that your activities further a public charitable purpose rather than the promotion of private interests within the meaning of section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements